

**UNITED STATES COURT OF APPEALS**

**OCT 30 1997**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL THOMPSON,

Defendant - Appellant.

No. 97-2156  
(D.C. No. CIV-96-1703-LH)  
(District of New Mexico)

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**ORDER AND JUDGMENT\***

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Before **TACHA, BALDOCK** and **LUCERO**, Circuit Judges.

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Appellant Michael Thompson, appearing pro se, seeks leave to appeal an order of the District Court for the District of New Mexico denying with prejudice his motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. We deny appellant a certificate of appealability because he has failed to make a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(1), and dismiss the appeal.

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\*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Thompson pled guilty on March 18, 1994 to possession with intent to distribute of 42.4 milligrams of LSD in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). The district court calculated an offense level of 20 and criminal history category of VI, after applying downward departures for acceptance of responsibility and mitigating circumstances and an enhancement for being a career offender. Appellant was sentenced to seventy-two months from an applicable guideline range of seventy to eighty-seven months. He now challenges his sentence on only one ground -- that his original offense level without any adjustments was miscalculated at level 12 instead of level 10.

The Drug Quantity Table in U.S.S.G. § 2D1.1(c) sets forth the respective base offense levels for possession of various amounts of drugs. Subsection (14) establishes an offense level of 12 for possession of “Less than 50 MG of LSD.” The district court correctly calculated the base offense level in sentencing appellant for possession of less than one gram of LSD.

Appellant’s request for a certificate of appealability is DENIED, and the appeal is DISMISSED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero  
Circuit Judge